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**LETTER OF TRANSMITTAL**  
**SAS Foundations E2/T1 Project**

Run Date 30-Mar-07  
Time 2:39 PM

Dated: 30-Mar-2007

TRANSMITTAL No: KFM-TRN-000523

Rev: 00

To: Pedro Sanchez

Caltrans - SAS E2/T1 Foundation Project  
333 Burma Road  
Oakland CA 94607  
Phone: 510-286-0538 Fax:

Co/Job # 364-4347

Contract # 04-0120E4

Sub/Supplier:

Sub/Supplier No:

Subject: Supplemental Notice of Potential Claim #05-031707

Special Provis. (SP) REF:

Standard Spec. (SS) REF: 9-1.04

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items:

☒ Attached

☐ Via Fax

☐ Contract Plans/Specs

☐ Certs of Compl./Samples

☐ Working Drawings

☐ Drawings/Calculations

☐ Schedule

☐ WQCP and/or Addenda

☐ Change Order

☐ Progress Estimate Request

☐ Weekly Welding Reports

☐ Copy of Letter

☐ Payroll Information

☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	30-Mar-2007	0	Form CEM-6201B - Supplemental Notice of Potential Claim #05-031707	

These are transmitted as checked below:

☐ For Approval

☒ For Review/Comment

☐ Return For Correction

☐ For Your Use

☐ As Requested

☐ For Information

**Remarks:**

Attached, please find form CEM-6201B - Supplemental Notice of Potential Claim #05-031707.

If you have any comments or questions, please contact this office.

CC:

Submitted By:

Meda Schultz

(KFM Staff Member - Originator of Transmittal)

Checked & Sent By:

Contract Admin/DCS Staff

Specification 9-1.04 – Notice of Potential Claim

Supplemental Notice #05-031707

Attachment to form CEM-6201B

**A) The complete nature and circumstances of the dispute which caused the potential claim.**

This dispute is a result of KFM's repeated requests to the State for the issuance of a Contract Change Order ("CCO") to compensate KFM for directed changes to the contract plans as a result of the specified Integrated Shop Drawing ("ISD") process and the State's subsequent failure to do so as required by the Contract.

Section 4-1.03, "Changes" of the Standard Specifications ("SS"), states that the Engineer can make alterations, deviations and additions to or deletions from the Contract. The second paragraph states the following:

"Those changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for that work. A contract change order will not become effective until approved by the Engineer."

Subsequent to the approval of the ISD submittals for Piers T1 and E2, State Letter #1485, dated June 30, 2006, was forwarded to KFM. In accordance with SS 4-1.03, "Changes", KFM was directed by this letter to proceed with the construction of Pier T1 and Pier E2 per the contract plans with design conflicts resolved in accordance with the approved ISD revisions and all related RFI responses.

This direction was given without an approved CCO in place and did not provide revised project plans; therefore, the complete nature and circumstances of such changes could not be fully understood by KFM at that time. Letter #1485 continued, "...payment for extra work and changes in the contract item quantities that may be associated with applying the approved ISD conflict resolutions and RFI responses to the construction of Pier T1 and Pier E2 shall be addressed in Contract Change Order No. 41".

KFM requested that the State issue a complete set of revised project plans to illustrate all of the conflict resolutions so KFM could analyze, price and later to communicate with and build the work.

On September 13, 2006, under State Letter #1869, the State forwarded a revised set of contract plans, "incorporating the results of the integrated shop drawings". The State ordered KFM to, "...proceed with the construction of Pier T1 and Pier E2 per the revised contract plans and that payment for the extra work and changes in contract item quantities associated with applying these revised contract plans to

the construction of Pier T1 and Pier E2 will be addressed in pending Contract Change Order #41”.

These revised contract plans were issued by the State under the premise that all changes as a result of the ISD process were fully illustrated and described. However, these plans failed to meet the State’s intended goal. They did not represent all known ISD resolutions and those that were represented, were described minimally – essentially resulting in a ‘red-line’ of the original contract plans. Therefore, the complete nature and circumstances of the changed work as shown in the ISD submittals and as ordered by the State for the Pier E2 and T1 footings had not been properly described.

Although KFM was ordered to proceed with these incomplete changes over nine months ago, a complete set of revised contract drawings still has not been incorporated into the contract via an approved CCO#41. SS 4-1.03, “Changes”, third paragraph, beginning with the second sentence reads:

“If ordered in writing by the Engineer, the Contractor shall proceed with the work so ordered prior to actual receipt of an approved contract change order therefor. In those cases, the Engineer will, as soon as practicable, issue an approved contract change order for the ordered work ...”

The State has failed to issue CCO#41 as soon as practicable as required by Contract and KFM remains uncertain as to the complete nature and circumstances of the change.

Furthermore, the State’s assertion that these changes have been addressed in previous CCOs is contrary to the scope language and accounting for these CCOs.

As described on the face of the change orders, CCOs #17 and 18 provided compensation only for the following:

“...revising the initial set of ISDs per the Project Plan sheets listed in this Change Order, estimating, RFI preparation, project management and administration, meetings and coordination, checks and reviews, and schedule impacts associated with this Change Order.”

CCOs #17 and 18 were executed prior to Contract restart and the amount of compensation agreed to by KFM and the State was based only upon this scope of work and the accounting of this

amount agrees with this scope. KFM was not compensated for any changes other than those described in this scope.

Executed Contract Change Order #29, the restart change order, as described on the face of this CCO, provides compensation for the following:

“all direct labor, indirect labor, equipment, materials, home office, G&A costs, onsite and offsite yard costs, fuel costs, equipment breakdown, escalation of equipment, materials, labor, loss of productivity, inefficiencies, and Time Related Overhead (TRO) **to complete the work as described in the base contract, previous CCOs and this CCO.**”

“It is the intent of the parties that the compensation provided in this CCO, together with all other CCOs issued prior to the date of acceptance of this CCO and the base contract, **will resolve all issues related to restarting the contract** and establish a new contract price for the completion of the contract, except as listed in Section 4.0 of this CCO.”  
(emphasis added)

The amount of compensation for CCO#29 was agreed upon by KFM and the State based on this scope of work and the accounting of this amount agrees with this scope. KFM was not compensated for any changes other than those described in this scope.

The ordered changes associated with the forthcoming CCO#41 are clearly not addressed in these previously issued CCOs. As it relates to this dispute, CCOs #17 and 18 covered only revising the initial set of ISDs and CCO#29 covered only what is described in those previous CCOs and issues related to restart. The changes required under CCO#41, although the complete nature and circumstances of the change still have not yet been fully conveyed by the State, are not addressed within the scope or accounting of these previous CCOs. The subject changes do not include revising the initial set of ISDs (this was done prior to restart), nor are they related in any way to restarting the contract. They are new changes, resulting from the as specified ISD process, that under our Contract require revised contract plans and an associated CCO.

While KFM has attempted to explain this rationale to the State on many, many occasions, the State has repeatedly failed to understand or provide valid reasoning, in the context of the scope and accounting of these previous changes, to justify their denial.

In summary, the changes pursuant to the ISD process have not been fully communicated or addressed in an approved CCO nor has a complete set of associated contract drawings been provided as requested by KFM in letters #166, 171 and 172.

KFM has sent four separate letters to the State requesting issuance of an approved CCO. They are letters #166, dated June 1, 2006, #171 and 172 both dated June 29, 2006 and most recently #246, dated March 8, 2007. None of these have resulted in the issuance of a CCO. Instead, State Letter #2958, dated March 13, 2007, in response to KFM letter #172, denied KFM's request for compensation for the incorporation of all ISD resolutions into the contract plans, effectively resulting in the filing of the Initial Notice of Potential Claim #05-031707 on March 16, 2007

**B) The contract provisions that provide the basis of the potential claim.**

SS 4-1.03, "Changes" provides the basis for the State's failure to issue a CCO. SS 4-1.03D, "Extra Work", provides the basis for compensation. KFM has been directed, in State Letter #1485 and 1869, to incorporate the changes to the work resulting from the specified ISD process as described in Special Provision 5-1.0105, "Integrated Shop Drawings".

This notice is being filed in accordance with Standard Specification Section 9-1.04, "Notice of Potential Claim".

**C) The estimated cost of the potential claim, including an itemized breakdown of individual costs and how the estimate was determined.**

Description	Estimated Cost Impact
Concrete	\$1,675,000.00
Reinforcing	\$ 333,000.00
Structural Steel	\$ 62,000.00
<b>Total</b>	<b>\$2,070,000.00</b>

This estimate was determined using limited information on direct elements only and does not include contractually allowable compensation for Contractor's overhead or other impacts not specifically addressed.

Because we have not received the complete nature and circumstances of the change, this preliminary estimate is based upon the limited scope of information KFM has received from the State to date. Upon issuance of CCO#41 and a complete and accurate set of revised contract drawings, KFM should be able to provide a more representative estimate of the impact associated with the changes to the work.

**D) A time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of contract time is made.**

Preliminary information indicates that reinforcing work is anticipated to be delayed by approximately three weeks. Other work items, including the corbel and revised fender work will be delayed by approximately three additional weeks.

As described above, this information is preliminary. As additional information is obtained or provided by the State, a more representative analysis can be performed.